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INTERNATIONAL ARBITRATION

LETTER ON
INTERNATIONAL ARBITRATION

ADDRESSED TO

HON. JOHN SHAFROTH, UNITED STATES SENATOR
FROM COLORADO

BY

OSCAR T. ^{W. V. C.}CROSBY
WARRENTON, VA.



PRESENTED BY MR. SHAFROTH

FEBRUARY 24, 1915.—Referred to the Committee on Printing

WASHINGTON
GOVERNMENT PRINTING OFFICE
1915

REPORTED BY MR. FLETCHER.

IN THE SENATE OF THE UNITED STATES,
February 19 (calendar day, March 3), 1915.

Resolved, That the manuscript submitted by Mr. Shafroth on February 24, 1915, entitled "International Arbitration," by Oscar T. Crosby, Esq., of Warrenton, Va., be printed as a Senate document.

Attest:

JAMES M. BAKER,
Secretary.

JUN 1 1915

INTERNATIONAL ARBITRATION.

VIEW TREE,
Warrenton, Va., February 20, 1915.

HON. JOHN SHAFROTH,
United States Senate, Washington, D. C.

SIR: I am informed that press of business will prevent a hearing during this session of Congress before the Committee on Foreign Affairs of the Senate on Senate joint resolution No. 233, recently introduced by you and referred to that committee.

If such be the case, may I have the privilege of laying before the members of the committee through this letter arguments in favor of the passage of the said resolution?

It aims to end international war by arming an international court and disarming individual States except as to their internal police forces.

It may be presumed that a large majority of our citizens desire any means, honorable and efficient, by which international wars may be avoided, if at the same time our national interests and ideals may receive at least as strong a guaranty as is now obtained by an international system resting in the last analysis upon competitive force exercised in war.

There are indeed men in all countries who believe that warlike contests work for the actual good of humanity. Such men would not, if they could, establish peaceful determinations for all international disputes. They believe that the sufferings incident to war and the sacrifices required of poor and rich in making war preparations are more than compensated by the development of virtues which would be lost to the race if we refrained altogether from military contests.

It can not be doubted that in spite of all its horrors war does make an appeal, war does arouse enthusiasms, which have caused men to seek the battlefield even when unconcerned about the merits of the strife in which they engage.

It is also true that the race must still admire that spirit of sacrifice which causes a man, understanding his nation's quarrel, to offer his life and his property in its defense.

In any complete discussion of the subject of war this phase of the matter must receive due attention. But in this communication it does not seem wise, considering the limitations of time and space, to dwell lengthily upon it. One must be content to remark that even if international wars be suppressed there will remain causes of dispute between groups within each nation which will arouse men to acts of violence. In these contests the fighting instinct may be gratified and to some extent the fighting virtues preserved. And

it may be further remarked that the general evolutionary process by which our race has been developed seems to carry with it the substitution of intellectual contests for physical contests between individuals and groups.

Let us consider, then, the merits of the measure in question from the point of view of those who are desirous of finding peaceful solutions for international disputes.

The resolution, if adopted, would declare to the world the acceptance by our Government of the principle that international disputes, threatening war, shall be submitted for final determination to an international body, and that the decrees of this body may be enforced, when necessary, by the action of an international army and navy under the orders of the tribunal making the decree.

No legislative power is granted to the court. Hence the new organization is far simpler than that required for the functioning of a complete sovereignty.

With a view to more explicit understanding of the proposed mechanism, a tentative draft of articles of agreement, setting up such a tribunal, is appended to the resolution. Were the whole subject less novel than it is the insertion of such a tentative draft might be deemed superfluous. When, however, we consider how radical and important is the proposed change in international relations, it seems best that some clear definition of the powers and composition of the proposed tribunal should be discussed throughout the length and breadth of many lands.

In this manner misunderstanding of general terms will be avoided. As the tentative draft is intended to clarify the general principle espoused, and to aid discussion, and is not presented as a finality, it may be supported even by those who disapprove some of its specific provisions.

The most optimistic apostles of the cause must contemplate widespread agitation of the subject before nations can be brought to make those sacrifices of independence, and those departures from tradition, which are necessarily involved in the substitution of a central control for that competitive-force system which has obtained thus far in the development of States.

If such discussion can be initiated in various legislative bodies throughout the world, then private opinion, through the agencies of press and platform, may the more readily be crystallized. Writers and orators will be furnished with specific texts, and the minds of men will thus be formed to readiness for final action.

The tentative draft thus offered to the world may be studied, criticised, condemned, and modified in a thousand ways. But there is one heart and soul to it, which in the end must be accepted or rejected. It expresses itself concretely in the first resolution. It declares that all international disputes threatening war must be submitted to the judgment of an international tribunal fully armed to enforce its decrees. As an implied corollary to this it follows that competitive international armaments must disappear.

Objections against any such arrangement will spring to the lips of every critic. They have thus been urged against every consolidation, whether between individuals, tribes, provinces, or confederated States, that has ever been accomplished in history. Nor are these criticisms

without foundation. It can not be hoped that any political structure of man will work faultlessly to its intended purpose.

Our own splendid Government was for four tragic years an utter failure. It had been built up of States desiring to live together. But in the great storm produced by an evil for which, happily, no parallel can now be found, this fair structure was for a time riven in twain. Yet is there one man now living under our flag but who blesses the work of our fathers?

If the principles of the resolution be approved, this Nation seems peculiarly fitted to lead the way toward action which shall embody those principles. We have the strength of a giant. If the giant insists upon violence in the settlement of disputes with neighbors, it is he, rather than they, the weaker ones, who may dominate in any controversy.

If Strength proposes to Weakness that Adjudication shall be substituted for competitive Force, there will then arise no suspicion of selfish cowardice. The motive of such an action must be recognized as a desire to promote the true interests of all those groups, the Weak and the Strong alike, constituting the struggling mass of our race.

It may be said that nations are not yet prepared for those sacrifices of pride and of supposed interest, which have been made by individuals, tribes, provinces, and confederated States, in upbuilding the nations themselves.

If indeed, this be true, then let no man doubt that however tragic may be the war now desolating Europe and Asia, it must be followed only by repetition of war preparation, and of war making in the future. Let there be no false hopes of beatitude among nations. They are only groups of individuals, governed in their development by the same laws which have directed smaller groups, once sovereign, now component parts of existing States.

It is interesting and important to observe that many men who have for years preached against international wars, offer various compromises which seek to avoid the radical step proposed by the resolution, while hoping to attain the same end. It must be assumed that no responsible legislator will reach a conclusion in respect to this matter, without examining these compromises, urged as they are in all sincerity, by devoted men who wish to make "war against war." Their propositions seem to fall into three classes.

(a) It is proposed by some that nations shall, in all cases threatening war, agree to accept the arbitrament of an international tribunal not having control of military forces, and at the same time shall agree to use their respective and independent forces against any State refusing to accept the decrees of such a tribunal.

(b) It is proposed by others that, as before, the nations shall in cases threatening war, agree to accept the arbitrament of an international tribunal not having military force as a sanction for its decrees. But, instead of an agreement to use independent international forces to procure when necessary the observance of decrees, reliance shall be placed wholly upon public opinion as a sufficient sanction. In connection with this proposition, some would leave the nations free to maintain independent armaments, and some would require that agreements of disarmament should be made as a necessary part of the peace-making program.

(c) Others propose, either in substitution for, or in addition to the programs calling for an international court without international force in its control, that treaties should be made requiring "cooling-off periods," usually suggested as a twelve-month, during which investigation shall be made as to the merits of the quarrel. Such investigation is presumed to follow the failure of diplomatic methods looking towards settlement. And, in turn, the "cooling-off period" may be followed by resort to arms which, by presumption, are to be held in readiness for use, even as they are now used in the final determination of international disputes.

In connection with these propositions, it is often further proposed that armaments carried during times of peace shall be limited by international agreement, although their retention implies final resort to war in case the proposed mechanisms fail to secure peace.

As it is a common factor introduced into the three main propositions, we may conveniently consider separately this matter of limitation of armaments by treaties.

The evils of war are properly contemplated under two heads: First, the burden of expenditures made during times of peace for war preparation. Second, the expenditures and the destruction of life and property incident to the actual making of war.

Most of those who urge limitation of armaments by agreement have in mind not only the economies to be effected immediately, but also they believe that large competitive armaments tend to bring on war by reason of a certain financial desperation, felt by statesmen, and a certain desire to justify their existence, felt by military men. It is difficult to conclude whether or not this view is correct. Happily for the purposes of the argument, it is unnecessary to enter into that discussion.

There are good reasons for believing that it will not be found possible to establish limitations of armament by treaty so long as independent, competitive, national armaments remain as the final guaranty of national security. Preparations for war can not be based upon principles radically different from those controlling the making of war. They are parts of the same program.

Every nation makes some rough estimate as to the probabilities of war, and of its effects, if waged with some other state or group of states. This estimate must vary from time to time. Armaments are determined by the wealth of a nation, and its estimate of impending dangers. Even if the armaments of all other nations could be predicted years in advance, yet the actual danger to any individual nation would constantly vary with variations in the war-potentiality of every other state, and with changes in the probable groupings of states adverse in interest to the nation in question.

These variations of power and of interest can not be predicted. They depend in part upon external relations, and in part also upon internal changes within each nation. They result, indeed, from a thousand complex currents going to make up the whirl of human development on our earth. If giants war with giants, each requires every ounce of his strength. It is only when giant wars with pigmy that polite self-restraint can replace maximum endeavor.

It seems absurd to suppose, in the absence of a central power, corresponding as to the preservation of order among nations to the courts and police of a state among provinces and individuals, that there

would ever be found a quixotic willingness on the part of Strength to write itself down to the level of Weakness.

The situation of our own country illustrates the truth of these assertions. We have chosen thus far to dedicate to war preparations a proportion of our strength far less than that which the wisdom of European nations has determined as necessary for themselves. It is obvious, however, that so long as the world remains ungoverned, we are, and must remain, free to modify, from year to year, our determinations in this vital matter.

I believe that this proposition of armament limitation will be defeated in the mind of every American legislator who endeavors, in any specific way, to define the fetters which he would be willing to place upon our Government in the discharge of its responsibility for the protection of our people against nations still in arms, all unchecked by any central control.

But, let us suppose the impossible to have become possible. Let us suppose that representatives of various nations were gathered together, empowered to restrict their respective governments in the vital matter of self-defense, while each is yet dependent, in the last analysis, solely upon the exercise of its own force for that defense.

I then ask, in what unit can this restriction be expressed? Will it be tonnage of ships? If so, of what kind of ships? Will it be in caliber or weight of guns? If so, what kind of guns? Will it be in the size of fortifications? If so, what kind of fortifications, and where placed? Will it be in the engine power of air craft? If so, of what kind of air craft?

Mere contemplation of the myriad engineering structures which enter into war brings confusion and defeat to any effort at limitation expressed in physical units.

But it will be answered that a limitation may be expressed in money. Let us suppose even this to be done. The agreements would rest upon a theory that a given amount of money would produce a given number of units of destructive capacity.

But alas for this theory. The inventor, who never sleeps, works ceaselessly to bring it to confusion. No sooner would the ink be dry upon documents witnessing some such fantastic agreement than a rumor would come of some obscure individual, whether in Oshkosh or Ostend, whether in Manchester or Magdeburg, whether in Pittsburgh or Petrograd, whether in Birmingham or Berlin, who had invented some new devil-machine of such nature that one unit of money expended in its construction would produce 10 times as many units of destructive capacity as had been possible before.

Some new Satan's breath of sulphur, some Lucifer's wings wafting death in the air, some invisible leviathan spouting destruction under the seas—these are the things which Invention will devise to confound the calculations of those who had dreamed of fixing ratios between the destructive capacities of nations preparing for the fierce competition of war.

Nor would it be necessary that any such device should actually have been produced.

The mere rumor of the inventor's work at Essen will cause England to declare, "Lo, I can not be bound by the unknown. When I agreed to spend only ten million pounds per annum, surely such an agreement contemplated enginery of war as then known. Now I must

spend millions more to defend myself against the Terror which is whispered to me from over the seas."

And France will say, "All that I have done now must go for naught unless I spend, not the one hundred million francs of the treaty, but double and triple that sum; for now we hear that Germany has in her power a mysterious death with which she may in a moment afflict us."

And Germany will say, "There is one in Paris who plots against us and who deals more cunningly than we. To save ourselves from this peril, we must spend, not the fifty million marks of our treaty, but three times, yea, four times that sum."

And so it seems to me the last state of our world, based upon armament limitation, will be worse than the first. No formula will be found to restrain the inventor. He is the spirit of our age. He will put fear of surprise in the hearts of all the senates. So must they follow the mad dance which he shall set for them. So the house of cards would fall.

Let us then pass to a consideration of the mechanisms purposed for the prevention of the actual shocks of war. Both of the plans, as outlined above in (a) and (b), provide for a court but make no provision for getting the parties before the court, except the general and preliminary agreement that all disputes are to be settled peacefully through the court. This, it seems to me, is a fatal stumbling block. He who remains possessed of his arms in a society made up of groups, each independently armed like himself, and confronted by no central and superior force, will easily find justification for an evasion of any understanding for the submission of his quarrels to a forceless tribunal.

Many order-loving American citizens in pioneer days have felt justified in shooting an enemy whose hand has gone toward his hip pocket. So it would be among States. In its navy, every nation has a hip-pocket pistol. Each antagonist must fear, as a danger to himself, any delay incident to his appearance before a court that can not restrain violence by force. Seeing his adversary armed and increasing his armament, he must do likewise. He must fear a sudden surprise. In our picturesque vernacular, he must not permit the other to "get the drop on him." Under such circumstances it would be vain to suppose that nations will not fight, and at the same time declare that they are acting in good faith under the treaties.

Indeed, it must be remembered that the world's wars are rarely made by men in bad conscience, but by men in good conscience. It is firmly believed by each of the raging armies that the slaughter of enemies is not a privilege, but a duty.

It is true that many international disputes have been freely submitted for peaceful solution either to the ways of diplomacy or to special arbitrations. And it is also true that in the cases of special arbitrations agreements to abide by the findings have generally been kept.

So also it is true that among men in their individual affairs the vast majority of their disputes are settled either by that which corresponds to private diplomacy or by boards of arbitration voluntarily created by the disputants. Yet, would these facts encourage any thinking man to take away from society that final sanction of a central and compelling force which deals with the cases when individuals or small groups of individuals will *not* settle their disputes by arbi-

tration? The police force of a city does not pass its time in breaking the heads of obstreperous citizens. Yet the night-stick and the revolver can not be safely laid aside. The occasion comes when good men and bad men, through passion or through cunning, break the bonds of peace and require repression.

For corresponding cases in the affairs of nations, it would seem essential, if we are to have relative peace among States, that they should erect over themselves a tribunal whose commands shall be strengthened by the control of physical force. The exercise of this force may be required, either against the recalcitrant who refuses to appear before the appointed tribunal, or against him who, having appeared, fails, either through overt or covert act, to follow its decrees.

However solemn may be the engagement looking to the submission of all threatening disputes to an international tribunal, we must look for a repetition of the jealousies and the competitions in armaments if the nations retain at their will vast fleets, huge fortifications, and multitudinous land forces. If indeed the world must now try again the bankrupt principles of the Holy Alliance, it will later reach for the control of nations, the long-tried and practical system of a central power erected over any groups seeking peace with justice. And it will reach this conclusion not through the improvement and perfection of nerveless courts, but through their failure and the resulting chaos, even as we now see titanic destructions made by the very powers which led in the establishment of the Hague court.

It remains to ask whether such treaties as those recently made by this country with others for the establishment of a "cooling-off period," can be relied upon as a considerable step in the direction toward which they undoubtedly are intended to point.

At the outset of such inquiry we may assume but little faith in their efficacy, because in no case is there concealment of the fact that at the end of the cooling-off period the temperature may be not lower but higher than at its beginning. Nor is there endeavor to disband the armies and to sink the navies of individual States; but, on the contrary, these are supposed to be ever ready for their fierce competitions. It would therefore appear that, in so far as the preparations for war are concerned, these treaties can not be taken as an alleviation of the burdens by which the poor of many lands have long been oppressed.

Moreover, it will appear that in a number of cases (perhaps in a majority) of the actual makings of war the very point at issue must determine itself in one way or the other before the expiration of a twelve-month "cooling-off period."

It is said that Spain was on the point of yielding, in some manner saving her own pride, to our insistent demands concerning the tragic conditions in Cuba; but to have waited a year or longer would have been to permit the starving Cubans to die if our contention was well founded.

It is not necessary in this discussion to pass upon the absolute merits of national controversies. Indeed, we may question as to whether codes of morals, familiar among individuals having a resort to courts, can be properly applied to States in their present uncontrolled condition. It is sufficient to recognize that demands are made concerning matters which in many cases must actually mature and

reach their finality within the proposed cooling-off periods. When we consider this fact, and when we further consider the suspicions and fears which would be engendered by war preparations during such periods, we must recognize that the value of the treaties in question will be found chiefly in those cases in which, as a matter of fact, none of the disputants think it worth while to go to war.

The three compromise proposals here discussed may be classed, with the existing Hague court, as additions to the general machinery of diplomacy, helpful at times and in no way to be condemned; but, on the other hand, they should not be accepted in lieu of individual armaments and individual determination to make war for the nation's supposed rights.

Viewing all these facts, sir, I urge that the whole subject of international reorganization be taken up by our Congress as early as possible. However long and however wearying may be the way toward a better condition than that which now exists, there must be a starting time and a starting point. What better time than now? What better point than the rostrums of the Senate and the House of Representatives of the United States in Congress assembled? And as a text for such a great discussion it seems to me that the resolutions introduced by you in the Senate and by the Hon. Richard Bartholdt in the House will better serve the purposes of discussion than any other of similar import now pending. And the hour of its passage and signature by the President will be the dawning hour of international peace.

Respectfully,

OSCAR T. CROSBY.



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